

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 13,017-g41L BY CLAUDIA THISTED

FINAL ORDER

The Proposed Findings of Fact, Conclusions of Law and Order as entered by the Hearing Examiner on January 14, 1980, are hereby adopted as the Findings of Fact, Conclusions of Law and Final Order.

FINAL ORDER

1. Subject to the conditions and limitations imposed below, the Application for Beneficial Water Use Permit No. 13,017-g41L by Claudia Thisted is hereby granted to appropriate .89 cubic feet per second or 400 gallons per minute of water, not to exceed 250 acre-feet per annum, in Glacier County, Montana, to be diverted by means of a well approximately 200 feet deep, at a point in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, Township 33 North, Range 6 West, M.P.M., and used for supplemental irrigation on a total of 250 acres, more or less, in said Section 1, from April 1 to October 1, inclusive, of each year.

2. The Permit is subject to all prior water rights and any final determination of existing water rights as provided by Montana law.

3. The Permittee shall install and maintain an adequate flow measuring device to accurately measure the rate and volume of water diverted or flowing from the well. The Permittee shall keep an accurate written log of periods of diversion. This includes the times and dates the water is diverted or flowing and the rate at which water is diverted

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1 or flowing during each period. Such records shall be presented to the
2 Department upon demand by the Department.

3 4. The well shall be so constructed that water is not allowed to
4 be wasted, to contaminate other water supplies or sources, and it shall
5 be capped or equipped so that the flow of water may be stopped when the
6 water is not being put to beneficial use. The well shall be allowed to
7 flow only when the water is being beneficially used during the permit
8 period.

9 5. The granting of Provisional Permit No. 13,017-g41L by the
10 Department in no way reduces or alters the Permittee's liability for
11 damage caused by the Permittee's exercise of this Permit. Nor does the
12 Department in issuing this Permit in any way acknowledge liability for
13 damage caused by the Permittee's exercise of this Permit.

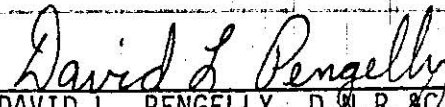
14 6. The granting of this Provisional Permit in no way grants the
15 Permittee any right to violate the rights of any other party, nor does
16 it excuse the Permittee from any liability for same, even if such violation
17 is a necessary and unavoidable consequence of exercising this Permit.

18 NOTICE

19 This Final Order may be appealed in accordance with the Montana
20 Administrative Procedures Act by filing a petition in the appropriate
21 court within thirty (30) days after service of the Final Order.

22 Since the hearing, Forrest Tevebaugh, Hearing Examiner, has resigned
23 and is no longer available to the Department. The undersigned has read
24 the entire hearing transcript and all evidence available in the file on
25 this matter.

26 DATED this 8th day of February, 1980.

27 
28 DAVID L. PENGELLY, D.W.R.&C.
HEARING EXAMINER

AFFIDAVIT OF SERVICE
(Final Order)

STATE OF MONTANA)

) ss.

County of Lewis and Clark)

Vicki J. Woodrow, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on February 8, 1980, he deposited in the United States mail, a "certified" copy of the Final Order by the Administrator, Water Resources Division, on the application by Claudia Thisted, Application No. 13,017-941L, for a permit to appropriate water, addressed to each of the following persons or agencies: Certified No. 57195 to 57206

1. Mr. Bruce and Mrs. Claudia Thisted; Huson, MT 59846
2. Mr. Don Presnell; Box 1472; Cut Bank, MT 59427
3. Mr. Leroy R. Wacker; Box 335; Cut Bank, MT 59427
4. Mr. Stanley DeZort; Box 1429; Cut Bank, MT 59427
5. Mr. Dalton L. and Mrs. Margret B. Smitherman, and Mr. Dalton L. Smitherman, Jr.; Santa Rita, MT 59473
6. Mr. Charles L. Smith; Star Route North; Cut Bank, MT 59427
7. Mr. and Mrs. Fred Volkman; Box 443; Cut Bank, MT 59427
8. Mr. Norman C. and Ms. Loretta Eberhardt; Box 281; Cut Bank, MT 59427
9. Mr. Robert J. Kraft; Box 264; Cut Bank, MT 59427
10. Mr. Edward O. Stewart; Box 2513; Cut Bank, MT 59427
11. Mr. Clare K. Smith; Box 2192; Cut Bank, MT 59427
12. Mr. Robert Larson, Field Manager; D.N.R.&C.; P.O. Box 1828; Havre, MT 59
13. Mr. Tom Patton; Montana Bureau of Mines and Geology; Ground Water Division Butte, MT 59701
14. Mr. David Pengelly; Hearing Examiner; D.N.R.&C.; Helena, MT 59601
15. Mr. Arlin Krogstad; Hearing Representative; D.N.R.&C.; Helena, MT 59601

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

by Vicki J. Woodrow

STATE OF MONTANA)

) ss.

County of LEWIS AND CLARK)

On this 8th day of February, 1980, before me, a Notary Public in and for said State, personally appeared Vicki J. Woodrow, known to me to be the Hearing Recorder, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Robert V. Hansen
Notary Public for the State of Montana

Residing at NOTARY PUBLIC for the State of Montana

Residing at Helena, Montana

My commission expires October 30, 1982

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *
IN THE MATTER OF APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) PROPOSAL FOR DECISION
NO. 13,017-g41L BY CLAUDIA)
THISTED)
* * * * *

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on October 5, 1978, at Cut Bank, Montana, for the purpose of hearing objections to the above named Application for Beneficial Water Use Permit No. 13,017-g41L, Forrest Tevebaugh, Hearing Examiner presiding.

The Applicant, Claudia Thisted, appeared at the hearing in support of the Application. Mrs. Thisted was not represented by legal counsel. No exhibits were introduced supporting the Application.

Others appearing at the hearing and testifying in support of the Application were Bruce Thisted and Don Presnell.

Nine (9) Objectors attended the hearing and presented testimony or statements. Objectors present were Leroy Wacker, Stanley DeZort, Clare K. Smith, Arthur Tomsheck, Ruth Rossman for Richard Rossman, Charles L. Smith, Bill Rose, Fred Volkman, and Mike Christenot representing Westco Refinery. Objectors, Westco Refinery, Mr. Wacker and Mr. DeZort were represented by legal counsel, James C. Nelson, of Cut Bank, Montana. The Objectors introduced two (2) exhibits supporting their objections, to wit:

OBJECTORS' EXHIBITS:

O-1 Letter from Mrs. Thisted to Montana Bureau of Mines and Geology (M.B.M.G.), dated April 28, 1977, and a letter from Pete Norbeck, (M.B.M.G.) to Mrs. Thisted, dated May 18, 1977.

O-2 Declaration of vested ground water rights by Richard and Ruth Rossman.

The Objectors' Exhibits were marked accordingly and received into the record without objections.

Montana Department of Natural Resources and Conservation personnel present and testifying on behalf of the Department were Steve White, geohydrologist and Bob Larson, Havre Field Office Manager, Water Rights Bureau. Also present was Janice M. Fisburn, Hearing Recorder. The Department was not represented by legal counsel. Two (2) Exhibits were introduced by the Department, to wit:

DEPARTMENT'S EXHIBITS:

D-1 Map of the area well locations.

D-2 Map of proposed irrigation area.

The Department's Exhibits were marked accordingly and received into the record without objections.

PROPOSED FINDINGS OF FACT

1. On May 24, 1977, the Department received an Application for Beneficial Water Use Permit No. 13,017-g41L by Claudia Thisted to appropriate .89 cubic foot per second or 400 gallons per minute of water, not to exceed 525 acre-feet per annum, in Glacier County, Montana, to be diverted by means of a well approximately 200 feet deep, at a point in the NW1/4 SW1/4 NE1/4 of Section 1, Township 33 North, Range 6 West, M.P.M., and used for supplemental irrigation on a total of 250 acres, more or less, in said Section 1, from April 1 to October 1, inclusive, of each year.

2. On December 14, 21 and 28, 1977, the Department caused to be duly published in the Cut Bank Pioneer Press, Cut Bank, Montana, notice of the above Application for Beneficial Water Use Permit No. 13,017-g41L,

1 3. On December 14, 1977, the Department received an objection to the
2 above Application from Norman C. and Loretta Eberhardt.

3 4. On December 28, 1977, the Department received an objection to the
4 above Application from Robert J. Kraft.

5 5. On January 17, 1978, the Department received an objection to the
6 above Application from Edward O. Stewart.

7 6. On January 18, 1978, the Department received objections to the
8 above Application from Charles L. Smith and Stanley DeZort.

9 7. On January 20, 1978, the Department received an objection to the
10 above Application from Dalton L. Smitherman, Maragert B. Smitherman and
11 Dalton Smitherman, Jr.

12 8. On January 22, 1978, the Department received an objection to the
13 above Application from Clare K. Smith.

14 9. On January 26, 1978, the Department received an objection to the
15 above Application from Mr. and Mrs. Fred Volkman.

16 10. On January 30, 1978, the Department received an objection to the
17 above Application from Leroy R. Wacker.

18 11. The Department received untimely objections to the above Application
19 from Westko Refining, James Edwards, Authur Tomsheck, Dave J. Harlin, Richard
20 Rossman, Leana Crummy, and Bill Rose.

21 12. At the hearing the Application was reduced from a total diversion
22 of 525 acre-feet per annum to 250 acre-feet per annum.

23 13. Bruce Thisted testified for the Applicant, that based on information
24 received from Butte and Helena (M.B.M.G and D.N.R.&C., respectively) there
25 may or may not be water available, but they would like a permit if the water
26 is available.

27 14. Mr. Presnell testified that the Application was made for supple-
28 mental irrigation water, since an upstream user had installed a reservoir
and ceased to allow water to flow down the coulee which the Applicant had

1 used in the past as a source of surface water. Therefore, the Applicant's
2 two (2) existing surface water rights plus a ground water right do not
3 satisfy their irrigation needs. The Applicant contacted D.N.R.&C. in Helena
4 and asked if a permit was necessary to drill a well and was told that it was
5 not necessary, therefore, the Applicant went ahead and put in the well.
6 Pete Norbeck, M.B.M.G., guessed that the well might flow approximately 250
7 gallons per minute. When the well was drilled, it was felt that it was flowing
8 approximately 400 gallons per minute, but currently the Applicant estimates
9 that it only flows 150 to 200 gallons per minute. A water sample was taken
10 and an analysis conducted and turned into the Soil Conservation Service
11 (SCS) office. The SCS said that the water was suitable for irrigation. The
12 Applicant does not intend to pump the well, but rather intends to rely
13 entirely on natural flow from the well.

14 15. Mr. Leroy Wacker testified that in 1963 his well was dried up
15 due to the pumping of wells by Union Oil and he is afraid that it will
16 happen again with the Applicant's well. He suggests that monitors be put
17 on his pumping wells or on another unused well that he owns to determine
18 whether the Applicant's well will affect the water level in his wells.

19 16. Clare Smith testified that his well is close enough, approximately
20 1/2 mile from the Applicant's proposed well, that his well may be affected.
21 His well is for household use only; he has city water available for irrigation
22 use. Mr. Smith would be willing to cooperate in taking water level measure-
23 ments in his well if the expense is not too great.

24 17. Mr. Tomscheck testified that he has no objections to the Applicant's
25 well as long as his prior right isn't affected. Mr. Tomscheck is willing to
26 cooperate in a monitoring program as long as the expense is not too great.

27 18. Mr. Rose testified that he has three (3) wells, two (2) of which
28 are not in use. The first well was drilled in 1971 to a depth of 465 feet.

1 The pump in this well kept burning out, so in 1973, he drilled a second
2 well to a depth of 185 feet. This well did not produce sufficient water
3 to meet his needs; currently this well only produces 3 gallons per minute.
4 At the peresent time, Mr. Rose is using an old well originally drilled by
5 Union Oil. The original well was 300 feet deep. Mr. Rose cleaned the
6 well out to 257 feet in 1977. Mr. Rose has not filed a permit on this
7 third well.

8 19. Mr. Volkman testified that his well has 149 feet of pipe in it
9 and 22 feet of water in the bottom of the pipe. He stated his concern
10 regarding the Applicant's well since the Department's Technical Report on
11 this matter suggested that his well may be drawn down six (6) to eight (8)
12 feet, which would not leave him much available drawdown for pumping in his
13 well. His well has no access port on it for use as a monitoring well.
14 Normally his well is used during the winter to water 65 head of cattle
15 from October to June so that his period of use would not interfere with the
16 Applicant's use of her well for irrigation during the summer months.

17 20. Steve White testified for the Department regarding the geologic and
18 hydrologic systems in the area. The information in Steve's testimony is
19 mainly contained in Tom Patton's Technical Report, which is part of the file
20 on this matter. Water quality in the Virgelle Formation is variable, ranging
21 from fair to poor. All of the Objectors, except C. K. Smith and Volkman
22 withdraw water from this aquifer. Volkman and Smith withdraw their water
23 from the Two Medicine Formation. Mr. White testified that much of the
24 information in Tom Patton's report was based upon 297 days of pumping of
25 the Applicant's well. Actually, the withdrawal period will last approximately
26 140 days; therefore, the impacts noted in the report would be significantly
27 less. Also, the impacts were based upon a pumping rate of 400 gallons per
28 minute. However, the Applicant does not intend to pump the well, rather

1 the well will be allowed to flow freely. Mr. White stated that the impacts
2 of a free flowing well should be significantly less than those of a pumped
3 well. Due to the many faults and folds in the geologic strata of the area,
4 it is difficult to actually determine the impacts on some of the Objectors'
5 wells. In particular, Mr. Wacker's well is not likely to be affected due to
6 the fault system between his well and the Applicant's proposed well. There
7 is a regularly monitored U.S.G.S. well situated in the Virgelle Formation
8 which could be used to monitor the affects of the Applicant's well.

9 21. Bob Larson testified for the Department that Mr. Presnell has
10 looked into other sources of water, in particular, he discussed a letter
11 received from Mr. Oney from the Soil Conservation Service, which outlines
12 several other possible sources of water for the proposed irrigation system.
13 Mr. Larson also went over a map, listed as Department Exhibit D-1, on
14 which all of the Objector's wells and also the Applicant's current well
15 and proposed well are plotted. He discussed each of the Objectors' wells
16 in regard to their use, total depth, static water level, in what formation
17 they are drilled into, and what their permit numbers are.

18 PROPOSED CONCLUSIONS OF LAW

19 1. Under the provisions of Section 85-2-311, MCA, the Department shall
20 issue a permit if:

- 21 "1. there are unappropriated waters in the source of supply;
- 22 a. at times when the water can be put to the use proposed
- 23 by the applicant;
- 24 b. in the amount the applicant seeks to appropriate; and
- 25 c. throughout the period during which the applicant seeks
- 26 to appropriate, the amount requested is available;
- 27 2. the rights of a prior appropriator will not be adversely
- 28 affected;

3. the proposed means of diversion or construction are adequate;
4. the proposed use of water is a beneficial use;
5. the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; . . ."

2. For the purpose herein, based upon testimony given at the hearing, it is concluded that there are unappropriated waters in the source of supply. A flow rate of approximately 400 gallons per minute for 140 days will yield 250 acre-feet of water.

3. Based upon testimony given at the hearing, it is not certain that the rights of prior appropriators will be adversely affected.

4. The proposed use of water is a beneficial use.

5. Based upon the above Proposed Findings of Fact, it is concluded that the criteria for the issuance of a beneficial water use permit as delineated in Section 85-2-311, MCA, have been met.

6. It is concluded that the issuing of Provisional Permit No. 13,017-g41L in no way reduces the Applicant's liability for damage caused by the Applicant's exercise of said Permit.

Based on the above Proposed Findings of Fact and Proposed Conclusions of Law, the following Proposed Order is made:

PROPOSED ORDER

1. Subject to the conditions and limitations imposed below, the Application for Beneficial Water Use Permit No. 13,017-g41L by Claudia Thisted is hereby granted to appropriate .89 cubic feet per second or 400 gallons per minute of water, not to exceed 250 acre-feet per annum, in Glacier County, Montana, to be diverted by means of a well approximately 200 feet deep, at a point in the NW1/4 SW1/4 NE1/4 of Section 1, Township

1 33 North, Range 6 West, M.P.M., and used for supplemental irrigation on
2 a total of 250 acres, more or less, in said Section 1, from April 1 to
3 October 1, inclusive, of each year.

4 2. The Permit is subject to all prior water rights and any final
5 determination of existing water rights as provided by Montana law.

6 3. The Permittee shall install and maintain an adequate flow
7 measuring device to accurately measure the rate and volume of water
8 diverted or flowing from the well. The Permittee shall keep an accurate
9 written log of periods of diversion. This includes the times and dates
10 the water is diverted or flowing and the rate at which water is diverted
11 or flowing during each period. Such records shall be presented to the
12 Department upon demand by the Department.

13 4. The well shall be so constructed that water is not allowed to
14 be wasted, to contaminate other water supplies or sources, and it shall
15 be capped or equipped so that the flow of water may be stopped when the
16 water is not being put to beneficial use. The well shall be allowed to
17 flow only when the water is being beneficially used during the permit
18 period.

19 5. The granting of Provisional Permit No. 13,017-g41L by the
20 Department in no way reduces or alters the Permittee's liability for
21 damage caused by the Permittee's exercise of said Permit. Nor does
22 the Department in issuing this Permit in any way acknowledge liability
23 for damage caused by the Permittee's exercise of this Permit.

24 6. The granting of this Provisional Permit in no way grants the
25 Permittee any right to violate the rights of any other party, nor does
26 it excuse the Permittee from any liability for same, even if such violation
27 is a necessary and unavoidable consequence of exercising this Permit.
28

RECOMMENDATION

1. The existing, regularly monitored U.S.G.S. Virgelle observation well should be used to record any water level changes caused by this appropriation.

2. All Objectors to this Permit are urged to regularly monitor the static water level in their own wells so that any possible decline in water levels in the area may be noted and brought to the attention of the Department.

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the mailing of this Proposed Order and shall end fifteen (15) days thereafter. No extensions of time for comment will be granted.

The Final Order in this matter will be sent to all parties by certified mail.

The Hearing Examiner's Final Order may be appealed in accordance with the Montana Administrative Procedures Act, by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

The Hearing Examiner, Forrest Tevebaugh, has resigned and is no longer available to the Department. The undersigned has read the entire transcript of the hearing, as well as the Department's complete file on this matter.

DATE this 14th day of JANUARY, 1980.


DAVID L. PENGELLY, D.N.R.E.
HEARING EXAMINER